

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 103

BY JUDICIARY, RULES, AND ADMINISTRATION COMMITTEE

AN ACT

RELATING TO COUNTY FEES AND THE PROTECTION OF PERSONS UNDER
DISABILITY; REPEALING SECTION 2, CHAPTER 55, LAWS OF 2005, RELATING
TO A SUNSET DATE FOR THE GUARDIANSHIP PILOT PROJECT FUND;
AMENDING SECTION 15-5-404, IDAHO CODE, TO PROVIDE THAT FINANCIAL
PLANS FILED IN CERTAIN CONSERVATORSHIP CASES ARE SUBJECT TO
EXAMINATION AND REVIEW AS PROVIDED BY RULES ADOPTED BY
THE IDAHO SUPREME COURT; AMENDING SECTION 15-5-418, IDAHO
CODE, TO PROVIDE THAT INVENTORY AND RECORDS FILED IN CERTAIN
CONSERVATORSHIP CASES ARE SUBJECT TO EXAMINATION AND REVIEW
AS PROVIDED BY RULES ADOPTED BY THE IDAHO SUPREME COURT; AND
AMENDING SECTION 15-5-419, IDAHO CODE, TO PROVIDE THAT ACCOUNTS
AND REPORTS FILED IN CERTAIN CONSERVATORSHIP CASES ARE SUBJECT
TO EXAMINATION AND REVIEW AS PROVIDED BY RULES ADOPTED BY THE
IDAHO SUPREME COURT.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 2, Chapter 55, Laws of 2005, be, and the same is hereby
repealed.

SECTION 2. That Section 15-5-404, Idaho Code, be, and the same is hereby amended to
read as follows:

15-5-404. ORIGINAL PETITION FOR APPOINTMENT OR PROTECTIVE
ORDER. (a) The person to be protected, any person who is interested in his estate, affairs or
welfare including his parent, guardian, or custodian, or any person who would be adversely
affected by lack of effective management of his property and affairs may petition for the
appointment of a conservator or for other appropriate protective order.

(b) The petition shall set forth to the extent known, the interest of the petitioner; the
name, age, residence and address of the person to be protected; the name and address of his
guardian, if any; the name and address of his nearest relative known to the petitioner; a general
statement of his property with an estimate of the value thereof, including any compensation,
insurance, pension or allowance to which he is entitled; and the reason why appointment
of a conservator or other protective order is necessary. If the appointment of a conservator
is requested, the petition also shall set forth the name and address of the person whose
appointment is sought and the basis of his priority for appointment.

(c) The petition shall include a financial plan for the proposed actions of the conservator
regarding the financial affairs of the protected person after appointment of the conservator,
to the extent reasonably known to the petitioner at the time of filing of the petition. If the
complete assets, income, expenses, debts and other financial concerns of the protected person
are not reasonably known to the petitioner at the time the petition is filed, or if the petitioner

1 is not the proposed conservator, then the conservator shall submit to the court, and to all
 2 interested persons, in writing, within the ninety (90) day inventory, as a part thereof, a financial
 3 plan covering all of the assets, income, expenses, debts and other financial concerns of the
 4 protected person. Such financial plan must also be given to any person who has filed a request
 5 for notice under section 15-5-406, Idaho Code, and to other persons as the court may direct.
 6 Such financial plan shall be given to all such persons in accordance with the methods set forth
 7 in section 15-1-401, Idaho Code. If the financial plan changes during any time period between
 8 the periodic reports of the conservator, the modified financial plan shall be filed with the next
 9 report as a part thereof. The financial plan and any modified financial plan filed pursuant
 10 to this subsection (c) shall be subject to examination and review by the court, or persons
 11 designated by the court to make such examination and review, as provided by rules adopted
 12 by the Idaho supreme court.

13 SECTION 3. That Section 15-5-418, Idaho Code, be, and the same is hereby amended to
 14 read as follows:

15 15-5-418. INVENTORY AND RECORDS. Within ninety (90) days after his
 16 appointment, every conservator shall prepare and file with the appointing court a complete
 17 inventory of the estate of the protected person together with his oath or affirmation that it is
 18 complete and accurate so far as he is informed. The conservator shall provide a copy thereof
 19 to the protected person if he can be located, has attained the age of fourteen (14) years, and
 20 has sufficient mental capacity to understand these matters, and to any parent or guardian with
 21 whom the protected person resides. The inventory filed pursuant to this section shall be
 22 subject to examination and review by the court, or persons designated by the court to make
 23 such examination and review, as provided by rules adopted by the Idaho supreme court. The
 24 conservator shall keep suitable records of his administration and exhibit the same on request
 25 of any interested person.

26 SECTION 4. That Section 15-5-419, Idaho Code, be, and the same is hereby amended to
 27 read as follows:

28 15-5-419. ACCOUNTS AND REPORTS. (a) Every conservator or guardian shall
 29 submit a written annual report to the court concerning the status of the ward and of the ward's
 30 estate that has been under the guardian's or conservator's control. The guardian or conservator
 31 shall also be required to provide copies of the report to all persons listed by the court as
 32 having an interest in receiving copies of the report. The court may order more frequent reports
 33 by its own ruling or pursuant to a petition of any person interested in the ward's welfare.
 34 Every conservator must account annually, or as otherwise directed by the court, and upon
 35 his resignation or removal. On termination of the protected person's minority or disability,
 36 a conservator shall account to the court and shall account to the former protected person or
 37 his personal representative. Subject to appeal or vacation within the time permitted, an order,
 38 made upon notice and hearing, allowing an intermediate account of a conservator, adjudicates
 39 as to his liabilities concerning the matters considered in connection therewith; and an order,
 40 made upon notice and hearing, allowing a final account adjudicates as to all previously
 41 unsettled liabilities of the conservator to the protected person or his successors relating to the
 42 conservatorship. In connection with any account, the court may require a conservator to submit
 43 to a physical check of the estate in his control, to be made in any manner the court may specify.

(b) Except as otherwise provided in subsection (c) of this section, every report submitted by a conservator shall cover a specific time period, which period shall be stated explicitly in the report. The report shall cover all of the estate of the protected person which is under the control of the conservator. Supporting documentation for items in the report shall either accompany such report or, if such supporting documentation is voluminous, or expensive to provide, or contains sensitive or private information, or another good reason exists for not providing such supporting documentation with the report, the report shall state the reason that the supporting documentation is not provided and that the supporting documentation is held by, or is reasonably available to, the conservator and will be produced upon request. The report shall contain, to the extent reasonably available to the conservator, at least the following:

(1) A reasonably detailed listing of the starting inventory of the estate of the protected person at the beginning of the time period for which the report is made. Every such inventory item shall be specifically identified; provided however, that items may be reported in categories, such as miscellaneous personal property, rather than individually, and valued by category, when reasonable. The fair market value of each such item or category shall be stated in such starting inventory and the method of determining such fair market value shall also be stated. In the case of an item or category which is secured by an encumbrance or debt of any nature, the encumbrance or debt shall be listed separately from the item or category and shall be specifically identified, including the items or category secured by the encumbrance or debt, the amount of the encumbrance or debt as of the date of the starting inventory, the holder of such debt or encumbrance, the family relationship of such holder to the protected person if actually known to the conservator, and any other reasonably relevant information;

(2) A reasonably detailed listing, for the covered time period, of the receipts, of any nature, by the estate of the protected person; provided however, that the receipts may be reported in categories, such as interest income, social security payments or rental receipts, if reasonable. Such listing shall reasonably identify each such receipt or category, including the source of such receipt or category and the exact amount or fair market value thereof, and the method of determining such amount or fair market value;

(3) A reasonably detailed listing, for the covered time period, of all payments or expenses, of any nature, by the estate of the protected person; provided however, that the payments or expenses may be reported in categories, such as rental or house payments, medical expenses or transportation expenses, if reasonable. Each such payment or category shall be set forth in reasonable detail, including the amount thereof, to whom the payment was made, the method or frequency of making such payment if not reasonably indicated by the item or category, the consideration for such payment if not reasonably indicated by the item or category, the family relationship of the receiver of such payment to the protected person if actually known to the conservator, the time period covered by such payment if relevant, and any other information reasonably relevant to such payment;

(4) A reasonably detailed listing of the ending inventory of the estate of the protected person at the end of the time period for which the report is made, in the same manner as described above for the starting inventory;

(5) If the report does not, on its face, balance exactly the starting and ending inventories with the receipts and payments of the estate of the protected person, a reasonably detailed analysis and statement of the reasons for such imbalance, and a reasonably detailed listing

1 of the correcting entries necessary to balance such report, such as unrealized gains or
2 losses on assets of the estate, shall be made as part of the report; and

3 (6) Any other information, of any nature, which is reasonably relevant to the actions of
4 the conservator during the time period covered by the report, which shall be submitted as
5 part of the report or shall accompany such report.

6 (c) Any report prepared by a federally or state chartered financial institution using a
7 fiduciary accounting system that produces statements containing asset positions, receipts, and
8 disbursements shall be deemed to satisfy the reporting requirements set forth in subsection (b)
9 of this section. The court may order any such report filed by a federally or state chartered
10 financial institution to be supplemented or may order that any information reasonably relevant
11 to the report be produced.

12 (d) All accounts and reports required by or ordered pursuant to this section, shall be
13 subject to examination and review by the court, or persons designated by the court to make
14 such examination and review, as provided by rules adopted by the Idaho supreme court.

15 (e) If a conservator or guardian:

16 (1) Makes a substantial misstatement on filings of any required annual reports; or

17 (2) Is guilty of gross impropriety in handling the property of the ward; or

18 (3) Willfully fails to file the report required by this section, after receiving written notice
19 of the failure to file and after a grace period of two (2) months have elapsed;

20 then the court may impose a fine in an amount not to exceed five thousand dollars (\$5,000) on
21 the conservator or guardian. The court may appoint a guardian ad litem for the ward on its
22 own motion or on the motion of any interested party to represent the ward in any proceedings
23 hereunder and may also appoint appropriate persons or entities to make investigation of
24 the actions of the conservator or guardian. The court may also order restitution of funds
25 misappropriated from the estate of a ward and may impose a surcharge upon the conservator
26 or guardian responsible for such misappropriation for all damages, costs and other appropriate
27 sums determined by the court, in addition to any fine imposed including, but not limited to, any
28 fees and costs of the guardian ad litem. The court may take any other actions which are in
29 the best interests of the ward and the protection of the assets of the ward. Any sums awarded
30 hereunder shall be paid by the conservator or guardian and may not be paid by the estate of the
31 ward. The court may enter judgment against a conservator or guardian for any or all of the
32 foregoing, and may impose judgment against any bond of such conservator or guardian.